

WHAT CAN I DO IF I CAN'T PAY MY DEBTS?

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1. What if I'm billed for something I didn't buy?

Try to settle the problem as soon as possible. If you get a bill for something that you didn't agree to buy, write to the creditor—the person or company that says you owe a debt. Do the same thing if you don't believe you received everything you are being asked to pay for. Keep copies of all your letters.

If you can't work things out on your own, try to find a consumer protection agency that handles the kind of problem you have. Look in the white pages of your telephone directory under "Consumer Complaint and Protection Coordinators." Or, call the state Department of Consumer Affairs toll-free at 1-800-952-5210 to find out who might be able to assist you with your particular problem. You can visit the department's Web site at www.dca.ca.gov.

In addition, you may want to consult a lawyer (see #15), because most debts are based on a contract. This is a legally binding agreement that can be written or spoken.

In any case, be sure to do something, because it could turn out that you owe a debt. And you could end up with serious money and legal problems.

2. Can other people find out about my debts?

Yes. If you don't pay your bills, you can end up with a bad credit rating, which is a report on your financial situation.

Credit ratings are issued by credit-reporting agencies. These companies get information about your debts from your creditors, and they make their reports available to other creditors, employers and landlords.

A credit report includes such information as whether you pay your bills on time, have had a foreclosure, owe money as the result of a lawsuit or were convicted of a crime. Each piece of information stays in the report for a certain number of years. For example, a bankruptcy usually will be listed for 10 years.

What if a store refuses to give you a charge account because you have a bad credit rating? The store must give you the name and address of the credit-reporting agency that made the report, and the agency must let you see the report.

If you tell the agency that some of the information in the report is wrong, it must look into the matter. If the agency decides that its report is correct, you can explain your side of the story in writing. Then, anyone who checks your credit rating will see your explanation. If you ask, the agency also must send your explanation to anyone who received your credit rating for employment purposes in the last two years and to anyone else who received your rating within the last six months.

3. Can I be forced to pay someone else's debts?

Sometimes you can. For example, if your spouse obtains a necessity of life—such as food, clothing or medical care—and cannot pay for it, you can be made to pay. This may be true for a former spouse, too, if you were married and not separated when your spouse got into debt.

In most cases, people under the age of 18 can get out of agreements to buy something. However, you are responsible for the debt if you co-sign a contract or loan agreement for someone under 18 or for anyone else. This means you promise to make the payments if the other person fails to live up to the agreement.

What if you co-sign an agreement for someone who ends up filing for bankruptcy? The other person may not have to pay the debt, but you will.

You also may have to pay certain debts, such as medical bills, for your minor child.

4. Can my creditors pester me?

Creditors or bill collection agencies—companies that try to collect past due bills—cannot legally call you over and over on the telephone. It is also against the law to threaten you with harm or contact you at work after you tell them not to. In addition, the law says that if you write and ask them not to contact you at all, they must stop. Then, they can get in touch with you only to let you know that they are suing you. Be sure to keep copies of all letters you write.

Creditors and collection agencies are not supposed to contact your employer, except to make sure that you are employed. And, they cannot send you anything that is meant to look like a legal document when it is not.

If you are bothered in any of these ways, you should get in touch with a consumer protection or law enforcement agency. Or you can ask a lawyer for help.

5. Can my property be taken to pay a debt?

A creditor usually must go to court and win a lawsuit against you before taking your property. However, let's say you make a written promise to either pay your debt or give the creditor something you own. The item you promise to give is called the security, and the money you owe is called a secured debt. If you fail to pay a secured debt, the creditor usually can take the security.

Let's say you borrow money to buy a car and the car is the security. If you fall behind on payments, the lender can repossess, or take back, the car without going to court. However, the car must be on public property when it is repossessed.

Even if the car is repossessed, you still might end up owing the lender money. For example, suppose you owe \$8,000 on the car when it is repossessed, and the lender gets only \$7,000 by selling the car at an auction. Then, you can be sued for the \$1,000 that the lender is out—plus any money spent to repossess the car and sell it.

Companies that repair or store items also can take property from you without going to court. For example, if a shop cleans your rug and you do not pick it up and pay for the cleaning, the shop can keep the rug and sell it after a period of time.

6. What happens if I am sued?

If you have a secured debt (see #5), the creditor can sue you for either the security or the amount of money it is worth or both. If you do not have a secured debt, you will be sued for the money you owe.

If you are sued for \$5,000 or less, a creditor might decide to take you to small claims court. You cannot be represented by a lawyer in this court, but you can talk to one beforehand. For more information, see the State Bar pamphlet *How Do I Use the Small Claims Court?* and *Using the Small Claims Court*, a booklet available through the state Department of Consumer Affairs.

Lawsuits for larger amounts are filed in a higher court, where it is important to have a lawyer represent you.

In any event, do not ignore any court summons that you receive. This is a paper that says you are being sued. If you do not respond to the summons within a certain time, you automatically lose the case—and your property or bank accounts can be taken.

As soon as you receive a summons, you should:

¥ Consult a lawyer (see #15).

¥ Get in touch with the lawyer hired by the person suing you and try to negotiate, or work out, a way to settle the dispute.

You can try to negotiate a settlement even after the suit is filed, but you should do so only if you have first responded in writing to the summons.

7. What happens if I lose the lawsuit?

Suppose the lawsuit demanded that you return a secured item. The creditor can get an order from the judge allowing a sheriff or marshal to take the item from you and give it to the creditor. Once this happens, your debt usually is canceled.

Maybe the suit demanded money and you did not pay the amount that the judge ordered you to pay. In this case, something you own can be attached, or taken. The property—such as a car or bank account—would be about the same value as the amount of your debt. A car, for example, could be sold, and the creditor would get the money it brings in. You may, however, be able to keep certain items (see #8).

A judge also can order your employer to withhold up to 25 percent of your take-home pay to pay a debt. This is called a garnishment of wages.

8. Can I protect my property if I am sued?

If you lose a lawsuit, you also may lose some of your property. However, the law lets you claim that some property is exempt, which means that it cannot be taken from you.

When you receive a notice that your property is being attached, you have 10 days to deliver a Claim of Exemption form to the sheriff or marshal. This form describes the property and explains why it legally cannot be attached. Most sheriff, marshal and court clerk offices have these forms.

The creditor can either accept your claim or challenge it at a court hearing. At the hearing, you must prove that the property is exempt. If you do not go to the hearing, you automatically lose the exemption.

You cannot file a Claim of Exemption if your debt is for unpaid federal income taxes or for a necessity of life such as food, shelter or medical treatment. These debts must be paid.

However, among other things, you and your spouse together can claim exemptions for:

¥ Up to \$75,000 in equity in your home if you are part of a family unit (up to \$50,000 if you are single), and up to \$150,000 (as of January 2004) if you are 65 years old or older, or disabled, or on a low income.

¥ A \$1,900 equity in one or more cars.

¥ Up to \$5,000 in tools and other items that you need for your work (or up to \$10,000 for items used by both spouses who do the same work).

¥ 75 percent of your salary for the last 30 days or wages that have not yet been paid.

¥ Up to \$5,000 worth of jewelry, heirlooms and works of art.

¥ Life insurance policies with a cash value up to \$8,000 each. Married couples may combine this exemption; it doesn't matter whether the policies belong to you, your spouse or both of you.

¥ Up to \$1,000 in an inmate's trust account.

¥ Up to \$2,000 each in a bank account in which your Social Security payments have been directly deposited (\$3,000 if the one payment is directly deposited for the benefit of both spouses).

In addition, you and your spouse each can claim exemptions for:

¥ Household furnishings and clothing that your family needs.

¥ A cemetery plot.

¥ All or part of retirement, disability and health insurance, workers' compensation, welfare, unemployment, union and other benefits that are needed to support your family.

9. What if I just need more time to pay my debts?

First, ask your creditors for the time you need. Or, ask if you can make a series of small payments over a period of time. If any creditor agrees to one of these arrangements, write a letter to confirm the agreement. Keep a copy of the letter.

You might try using the services of a credit and debt counseling agency. However, shop carefully for one that you believe gives good advice. Consumer Credit Counseling Service, a network of non-profit agencies partially funded by creditors and the U.S. Department of Housing and Urban Development (HUD), often helps people work out plans with their creditors.

To locate a Consumer Credit Counseling Service office in your area, look in the white pages of your telephone directory under "credit and debt counseling" or call 1-800-777-PLAN (777-7526). You can visit the service's Web site at www.cccssf.org. Or, contact the National Foundation of Consumer Credit at 1-800-388-2227. (The foundation's Web site address is www.nfcc.org.)

Be careful about getting a debt consolidation loan that is used to pay off debts. If the interest (the money that lenders charge for loans) is too high, you may end up with a bigger problem. If you do get a loan, however, make sure all of the financial statements that you give the lender are true and complete.

10. What if my creditors won't give me more time?

You can file a Chapter 13 bankruptcy in the nearest United States Bankruptcy Court. Chapter 13 allows you to stop all collection in exchange for your promise to pay your available funds to creditors under a Chapter 13 plan. The repayment plan allows you to pay your debts over a period of time—between three and five years. At the end of this time, all your debts are canceled—even if you have not paid them in full—as long as you fully performed your plan.

You could, instead, file a Chapter 7 bankruptcy. This means you ask the bankruptcy court to cancel most of your debts because you don't have enough money or property to pay them off.

To file Chapter 13 or Chapter 7, you must pay a filing fee in bankruptcy court, either alone or with your spouse. A trustee will be appointed. If you have a Chapter 13 plan, this person collects your payments and pays your creditors. If you file for Chapter 7 instead, the trustee sells any of your property that is not exempt (see #14) and distributes the money it brings in among your creditors. Once you have filed for Chapter 13 or Chapter 7, the creditors you had before you filed cannot attach your salary or other possessions without bankruptcy court permission.

If you lose your job or have a long illness while you are paying off your debts through a Chapter 13 plan, you can switch from Chapter 13 to Chapter 7 at any time. You can file for Chapter 7 only once in a six-year period. But you can file for Chapter 13 as often as you need to. However, you must have a good excuse if you fail to complete the plan and want to file a second time.

11. When should I use a Chapter 13 plan?

You should consider a Chapter 13 plan if you can work out a way to pay off part of your debts over a period of time and still afford the reasonable costs of living.

The law says you can use a Chapter 13 plan if you have a steady income. This means you work for wages, own a small business or receive pension, Social Security or other benefits. You also must owe less than \$871,550 in secured debts, such as a mortgage, and less than \$290,525 in other debts. (These dollar amounts will change in April 2004.)

If you qualify for Chapter 13, you and your lawyer must work out a plan for the court to approve. The plan must show how you intend to pay all or part of your debts. Certain debts must be paid in full. These include secured debts, federal or state income taxes that you have incurred in the past three years, and the court, trustee and attorney fees involved in setting up and carrying out the plan.

12. Should I file for Chapter 7 instead?

If you can't work out any other reasonable way to pay your debts, you might consider Chapter 7. It allows an honest debtor to make a fresh start by having a court discharge, or cancel, most debts. Chapter 7 is a way to get out of debt when you owe more money than you can be expected to pay in a reasonable amount of time.

The law says that an employer can't fire you or refuse to hire or promote you because you filed Chapter 7. However, Chapter 7 can have a bad effect on your credit rating (see #2) for a long time. Also, Chapter 7 may solve the problems you have now, but it won't protect you if you can't pay new bills.

If you choose Chapter 7, you or your lawyer must file a number of forms and papers with the bankruptcy court. These include a list of your debts and property, plus information on your income and how you spend it. The court decides if you are better suited for Chapter 13 than Chapter 7 if requested to do so. It can dismiss your case.

Also, a judge can refuse to discharge all or some of your debts through Chapter 7. For example, you may not be allowed to have your debts canceled if you run up a lot of bills on purpose or if you borrow money just before filing with a dishonest motive.

13. Will Chapter 7 wipe out all my debts?

No. Chapter 7 does not cancel:

- ¥ Secured debts.

- ¥ Most income taxes incurred in the last three years.

- ¥ All student loans, unless you qualify for a hardship discharge.

- ¥ Child and spousal support.

- ¥ Any money that you owe as a result of being sued for drunken driving.

Your debts also will not be canceled if a creditor proves that you lied about how much money you have, tried to hide some of your property or committed fraud.

You may choose to reaffirm a secured debt. This means that you decide to pay the debt and keep the security, even though Chapter 7 would otherwise cancel the debt.

14. If I file for Chapter 7, can I keep any property?

If your property is exempt, it cannot be used to pay off debts. When you file for Chapter 7, you can choose between two sets of exemptions. One set is the same as the one you can use to protect your property from creditors in a lawsuit (see #8). Homeowners generally prefer this set, since it allows a much larger home equity exemption than the other set.

These are examples of things that you and your spouse together can keep if you use the second set of exemptions:

- ¥ A \$17,425 interest in a home and/or burial plot. If you do not own either one, you can apply the \$17,425 elsewhere to keep such non-exempt property as an income tax refund. You also have a \$925 floating exemption, which means you can apply it to any non-exempt property.

- ¥ A \$2,775 interest in one car or other motor vehicle.

- ¥ All items (not to exceed \$450 in value in any one particular item) that are household furnishings and goods, clothing, appliances, books, crops and musical instruments.

¥ \$1,150 in jewelry.

¥ \$1,750 worth of books or tools that you need to earn a living.

¥ An unmatured life insurance policy and cash value in a life insurance policy up to \$9,300, each.

¥ Social Security and veterans' benefits, unemployment insurance money, and pension and profit-sharing plans.

15. How can I find a lawyer to represent me?

If you do not know a lawyer, ask a friend, co-worker, employer or business associate to recommend one.

Or, call a local State Bar-certified lawyer referral service. Look in the Yellow Pages of your telephone directory under "Attorney Referral Service," or contact your local bar association. For an online list of certified lawyer referral services, visit the State Bar's Web site at www.calbar.ca.gov.

State Bar-certified lawyer referral services, which must meet minimum standards established by the California Supreme Court, can assist you in finding the right lawyer for your particular problem. Most of these services offer half-hour consultations for a modest fee.

Attorneys who are members of State Bar-certified lawyer referral services must carry insurance, agree to fee arbitration for fee disputes, meet certain standards of experience and be State Bar members in good standing.

Lawyer referral service fees do vary. Don't forget to ask whether there is a fee for the referral or initial consultation. And if you decide to hire a lawyer, make sure you understand what you will be paying for, how much it will cost and when you will be expected to pay your bill.

What if you do not have enough money to pay for legal advice? You may belong to a "legal insurance" plan that covers the kind of services you need. Or, if you have very little income, you may qualify for free or low-cost legal help. Check the white pages of your telephone directory for a legal services program such as a legal aid society in your county. (California's new statewide legal services Web site—www.LawHelpCalifornia.org—can help you locate a local program and provide you with additional resources as well.) You also could ask your local bar association if its State Bar-certified lawyer referral service offers free legal advice to those with little income.

For more information, see the State Bar pamphlet *How Can I Find and Hire the Right Lawyer?* To find out how to order a free copy of this pamphlet and other State Bar consumer education pamphlets, call 415-538-2280 or send an e-mail to pamphlets@calbar.ca.gov. Or visit the bar's Web site—www.calbar.ca.gov—where you'll find the bar's consumer education pamphlets, as well as information on ordering them. The pamphlets also can be ordered in bulk.

The purpose of this pamphlet is to provide general information on the law, which is subject to change. If you have a specific legal problem, you may want to consult a lawyer.

The State Bar of California
Office of Media & Information Services
180 Howard Street
San Francisco, CA 94105-1639
415-538-2000
415-538-2280 (for pamphlets)
pamphlets@calbar.ca.gov
www.calbar.ca.gov

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